

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>RECONROBOTICS, INC.</b>	)	<b>WP Docket 08-63</b>
	)	
<b>Request for Waiver of Part 90 of the</b>	)	
<b>Commission's Rules for a Video and Audio</b>	)	
<b>Surveillance System at 430-450 MHz</b>	)	

**To:   The Commission**

**REPLY TO OPPOSITION TO  
PETITION FOR RECONSIDERATION**

ARRL, the national association for Amateur Radio, formally known as the American Radio Relay League, Incorporated (ARRL), by counsel and pursuant to Section 1.429(g) of the Commission's rules [47 C.F.R. §1.429(g)], hereby respectfully submits its Reply to the March 16, 2012 Opposition of ReconRobotics, Inc. (ReconRobotics) to ARRL's Petition for Reconsideration filed March 6, 2012. ARRL's Petition sought rescission of the letter *Order*, DA 12-138, released February 6, 2012, issued under the delegated authority of the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau (WTB). The *Order* granted ReconRobotics' request for modification of the 2010 waiver<sup>1</sup> authorizing the sale and marketing of the Recon Scout to allow the sale of up to 8,000 of these devices to customers during each of the third and fourth years following equipment authorization. ReconRobotics also asked that any unsold units of the device fewer than the maximum in any given year be carried over to unspecified future years (regardless of the number of interference instances that arise in any given year), so that the limits imposed during a given year could be exceeded by the

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<sup>1</sup> *ReconRobotics, Inc.*, Order, 25 FCC Rcd. 1782 (WTB/PSHSB 2010); *affirmed*, 26 FCC Rcd. 5895 (WTB/PSHSB/OET 2011) (collectively referred to herein as the "Waiver Order").

aggregate number of prior-year unsold units at the discretion of the manufacturer. The *Order* of the Deputy Chief, Mobility Division released February 6, 2012 went considerably further than granting that request. It abandoned any future Commission oversight of the number of units sold, and established an annual limit of 8,000 Recon Scout device sales for all subsequent years, with unlimited “rollover” of unsold devices in future years. This was done without public notice or public comment. ARRL’s Petition objected to the Commission’s arbitrary action and ReconRobotics has filed its opposition thereto. ARRL, for its reply, states as follows:

1. ARRL objected to the fact that the Mobility Division, without any explanation how it arrived at the appropriate annual sales maxima, established an annual sales limit of 8,000 units (plus prior year carryover amounts). The Mobility Division further noted that if ReconRobotics deems that number to be insufficient in any future year, it may request that the limit be “increased or eliminated.” It did this in addition to eliminating any future Commission oversight or reevaluation of the number of units sold. ReconRobotics argues at page 2 of its Opposition that this is merely a continuation of the 8,000 units that the Commission in the *Waiver Order* established as a sales maximum for year two of sales of the device pursuant to the Waiver. ReconRobotics argues that this was merely a stay-the-course decision to hold the limits constant “through later years” and at a level “consistent with the original *Waiver Order*.” It claims that it did not “seek to increase the annual sales limits”. That is not correct. ReconRobotics most certainly did seek to increase the annual sales limits. It asked, and was *summarily* granted by the Mobility Division the authority to carry over to future years unsold units from prior years. Given the generous initial authorization of ten thousand units of the device in the first two years, and the

number for which licenses have been sought to date, the carryover amounts plus a base of 8,000 units, the number of units to be permitted in later years is very substantial indeed.

2. The Waiver Order set an overall limit of ten thousand units of this device during the first two years of sales of the device. It specifically did not specify a limit on the devices thereafter, instead establishing a provision for reexamination of the sales limit after that initial two-year period. *Obviously*, that procedure was created to allow an opportunity for the Commission to determine what interference resulted from the deployment of ten thousand units of the device. Viewed in context, the Commission's intention was clear: a substantive evaluation of the results of deployment of the device would be conducted in terms of interference potential before determining how many more units should be sold going forward. Perhaps the evaluation of the results of the deployment of up to 10,000 units of the device would show that there was not a compatibility problem with incumbent users of the band, and larger numbers could be sold. Perhaps, on the other hand, it would show that there was a significant number of interference instances and that a downward adjustment of the number of units sold annually would be necessary. The annual limits were imposed for a reason in any case. The provision for future reexamination of the proper number of additional deployments of the device was to allow a meaningful evaluative process of the interference potential of the device on an ongoing basis. That process was gutted by the Mobility Division without any evidentiary basis for doing so.

3. The *Waiver Order* found that the deployment of the device in the band chosen by this manufacturer created a significant interference potential to Amateur Radio stations. It concluded at Paragraphs 9 and 10 that though there was interference potential

to Amateur Radio from the Recon Scout device, that potential “could be managed” by the various conditions placed on its operation as set forth in the *Waiver Order*. Among these conditions were the limits on the number of units that could be sold.<sup>2</sup> When, in 2010, the Commission decided that, subject to several material conditions (necessitated by the acknowledged interference potential of this device) the device could be marketed in numbers up to 10,000, after which there would be an evaluative process (with future evaluative processes in later years), which could adjust the number of units to be sold in later years upward or downward depending on the results of the initial deployment, it did not envision an abandonment of the process without any assessment of the results of the deployment. The plan assumed, of course, that there would be some deployment to evaluate after the initial two years.

4. ReconRobotics claims that the reason why there is no deployment of the device to evaluate to date is because ARRL has attempted to thwart the deployment of the device<sup>3</sup> by the filing of a Petition to Deny the applications that were initially filed to permit its use.<sup>4</sup> There is no bootstrapping by ARRL here. The evaluative process that was

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<sup>2</sup> In its April 15, 2011 *Order on Reconsideration of the Waiver Order*, the Commission claimed that the Bureaus involved in that decision “concluded that the low power, infrequent use, **and limited number of Recon Scouts** significantly reduced the possibility of interference to amateur operations.” (26 FCC Rcd. 5898; emphasis added).

<sup>3</sup> ReconRobotics asserts at page 5 of its Opposition that ARRL’s motivation is to “inject yet another element of uncertainty into ReconRobotics’ operations going forward.” Not so. ARRL’s motivation, as it has previously clarified, is to minimize instances of interaction between the public safety licensees who might rely on these devices and the public service-minded radio Amateurs who serve first responders on an ongoing basis, whenever possible. ARRL rejects the inference that the Amateur Service is attempting to deprive first responders of equipment that they want to use to help them save lives. Instead, ARRL is trying to limit the interference that will likely result from the exceptionally poor choice of frequency band by a manufacturer which is apparently unconcerned about that interference.

<sup>4</sup> The dramatic phrasing of ReconRobotics was that ARRL had filed “scores of Petitions to Deny against all of the license applications submitted by ReconRobotics’ customers.” The fact is that ARRL filed one Petition to Deny via the ULS, against each of approximately 82 identical applications, challenging, among other things, the specification of an incorrect emission designator, and the specification of an incorrect frequency range that was inconsistent with the *Waiver Order*. Contrary to ReconRobotics attempt to portray ARRL as an obstructionist, there was and is good and sufficient reason for each and every one of ARRL’s submissions in this proceeding.

created in the Waiver Order assumed that there would be up to 10,000 units deployed prior to the Commission's consideration of the proper number of units to be deployed looking forward. As it turned out, the number of units in licensed use at the time of the Mobility Division's letter was zero. That being an undeniable fact which the Mobility Division acknowledged, the Mobility Division should have deferred action on ReconRobotics' letter request to expand the number of units to be sold during the next two years, until a later date when there would be a substantial enough number of units deployed to permit a reasonable evaluation of the interference potential *in situ*. No harm could have been asserted by ReconRobotics because its apparent sales (judging from the number of license applications filed) were nowhere near the initial cap. Instead, however, the Mobility Division decided to abandon any pretext of oversight of the acknowledged interference potential of this device to the Amateur Service and to return the henhouse to the fox.

5. ReconRobotics claims that the Commission was within its "area of judgment" in reliance on the alleged "absence of verified (sic) complaints" received by ReconRobotics from the deployment of the Recon Scout pursuant to experimental license WE2XCL. It argues this even though out of 82 sites, only seven involved the use of the 430-448 MHz band. ReconRobotics touts the five-year period during which this experimental license has been outstanding<sup>5</sup> and accuses ARRL of attempting to obligate ReconRobotics to "prove a negative": i.e. the absence of interference complaints. ARRL

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<sup>5</sup> However, even now, when given the chance to provide some substance to the Mobility Division's arbitrary decision, ReconRobotics does not tell us anything about the deployment of its device in the 430-448 MHz band pursuant to the Experimental license. The public is left to wonder whether even one Recon Scout device was ever deployed at any of the seven sites out of 82 in the Experimental License that authorized the deployment of the device in that band. The arbitrariness of the Mobility Division is patently obvious.

asks for no such thing. The point is that the Mobility Division had absolutely no evidentiary basis that supports its decision to draw the conclusions that it did, and didn't ask anyone for any. It simply took an unsupported, conclusory statement from an obviously self-interested and profit-motivated manufacturer,<sup>6</sup> asked no questions about it of anyone, and concluded that (1) 8,000 units per year (plus aggregate unsold prior year units below the maximum) is the right number of units to be sold in all future years in order to manage the interference potential of the device; and (2) that no further Commission oversight of the number of units to be deployed is necessary at any time in the future. All of that was decided on the basis of seven experimental sites; no data about experimental license deployment; and no questions asked of anyone, even those licensees in the seven site areas. The Mobility Division's letter *Order* stated that:

“Applications for customer licensing of the Recon Scout remain pending, but ReconRobotics states that it has received no complaints of verified (sic) interference from operation of Recon Scouts pursuant to an experimental license. We conclude that we need not revisit the Recon Scout sale limit every two years. Consequently, we now establish an annual limit of 8,000 units, with a rollover of unused sales.”

6. It is quite obvious that the Mobility Division had no idea what the results of this “experiment” were, or whether any conclusions could be drawn from the experiment. It was never mentioned by the Mobility Division that 91.5 percent of the sites specified in the Experimental license specified operation that was completely irrelevant to the frequency band at issue. Questions that might have been helpful in evaluating the interference potential of deployed Recon Scout devices, and which might have provided

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<sup>6</sup> This is a manufacturer whose credibility should be nil. Prior to the letter *Order* of the Mobility Division, ReconRobotics had willfully and repeatedly marketed the very same device at issue prior to a grant of equipment authorization. The company has every incentive to misrepresent the interference potential of its product. Yet, the Mobility Division blithely accepted ReconRobotics' unsubstantiated conclusion that it has not received any “verified” interference complaints as the result of the marketing of its device.

some basis for a determination of the proper number of units to be deployed were never asked: How many units were deployed in the 430-448 MHz band at the seven sites? When were they deployed and how often? In what environments were they deployed? There is no information available at all that would allow the experimental license to be used as a basis for any decision concerning marketing of these devices beyond the initial ten thousand authorized by the Waiver Order. Why did the Commission not ask for comment on ReconRobotics' request to extend and expand the authorization to market this device, especially from Amateur Radio licensees in the area of the seven sites in which these devices were allegedly deployed?

7. This is not a matter of exercise of "judgment" by the Mobility Division, as ReconRobotics would have it. Rather, the Commission is obligated to provide a reasoned analysis for its decision, especially where, as here, the Mobility Division is departing from (and in fact effectively abandoning) the specific requirements of the *Waiver Order*. That *Waiver Order*, for interference management purposes limited the number of units of this device that can be sold and periodically evaluated. *Global Crossing Telecomms., Inc. v. FCC*, 259 F.3d 740, 746 (D.C. Cir. 2001); *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 42 (1983). As there is no justification for the elimination of future Commission oversight of unit sales of the Recon Scout; and because the Mobility Division was bereft of any factual basis for determining the proper fixed maximum number of unit sales; the letter Order was obviously premature,<sup>7</sup> arbitrary and capricious.

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<sup>7</sup> ARRL had argued in its Petition for Reconsideration that the decision of the Mobility Division was premature for a second reason: that ReconRobotics equipment authorization is under reexamination, so extending and expanding sales limits is untimely. ReconRobotics' Opposition, at 3, notes that this refers to the 100 kHz bandwidth issue and suggests that its TCB certification grants remain in place unless the Commission revokes them, which it says is rare and requires a hearing. ReconRobotics asserts that ARRL's challenge to the equipment authorization does not by itself vitiate the certification grant. Of course it doesn't. That was never ARRL's point. Instead, the point is that action on the request to expand the

ReconRobotics says at page 5 of its Opposition that “someone has to draw the line, and say at what point the experience to date justifies extending the prior sales limits. Congress has delegated that responsibility to the Commission.” Again, ARRL is not questioning the Commission’s jurisdiction to make a decision on sales limits going forward. The *Waiver Order* specifically provided for that to be done, assuming (1) that there had been a substantial period of deployment of the device that could serve as the underpinning for a decision; and (2) that there would, as one of the conditions attached to the waiver in order to mitigate the acknowledged interference potential of this device, be a periodic re-evaluation going forward of the proper number of units of the device deployed. What the Commission cannot do, however, (and certainly not under delegated authority) is to substantially modify a prior decision made after notice and comment rulemaking on the basis of no evidence at all, and without any public participation. What is painfully apparent from the Mobility Division’s letter *Order* is that the *Order* is premised solely on the alleged absence of complaints asserted by ReconRobotics rather than any experience with the interference potential of these devices on a deployed basis that could justify the actions taken by the Mobility Division.

8. Finally, as argued in ARRL’s Petition for Reconsideration, reliance on the manufacturer of a radio frequency device for any assessment of the number of interference complaints received or an evaluation of those complaints makes no sense at all. The manufacturer would not be the recipient of any such complaints; the agency deploying the device would receive them, if anyone does. But given the fact that

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equipment sales maxima was premature because there are serious questions that exist with respect to the applications that have been filed to use this device and about the propriety of the equipment authorization grant. Those issues will substantially further delay any necessary evaluation of the interference potential of these devices because they will not be deployed soon in sufficient numbers to meaningfully evaluate the interference potential of the device.



ReconRobotics had no station identification requirement for any of the deployments in the Experimental license, it is highly unlikely that, had any devices been deployed, interference would have been properly identified by the victims of the interference anyway.

9. ARRL again asserts that the letter *Order* is arbitrary and capricious and was issued without any substantial justification for the abandonment of the Commission's oversight of the interference potential of this device through a substantive evaluation of the proper number of units of the device that can be deployed pursuant to the *Waiver Order*. No additional units of the device over the initial ten thousand authorized by the *Waiver Order* should be authorized unless and until (1) there is substantial evidentiary basis for evaluating the effects of this device in the 430-448 MHz band; and (2) after a fair and objective evaluation has been conducted, following notice to all parties to this proceeding.

Therefore, ARRL, the national association for Amateur Radio, again respectfully requests that the Commission reconsider, rescind and vacate the February 6, 2012 letter *Order* of the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau granting ReconRobotics' request to modify the conditions of the *Waiver Order*. ARRL further requests that the Commission not permit any increase in the number of units of the Recon Scout over the previously authorized ten thousand without a full and complete examination of incidents of interference, after a reasonable opportunity for evaluation of

the operation of the device in accordance with the foregoing by the Commission, after notice to all parties to this proceeding.

Respectfully submitted,

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March 30, 2012

## CERTIFICATE OF SERVICE

I, Christopher D. Imlay, do hereby certify that I caused to be mailed, via first class U.S. Mail, postage prepaid, a copy of the foregoing **REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION** to the following, this 30<sup>th</sup> day of March, 2012.

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